IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 2602 OF 1994

Shri Dattatraya Dyandeo Chavan since deceased through his LRs. 1-a. Smt. Shalini Dattatraya Chavan and ors. .. Petitioners

Vs.

1. The Managing Director and ors. .. Respondents

Mr. S.B. Deshmukh h/f Mr. A.V. Anturkar for petitioners.
Mr. V.P. Sawant for Respondent Nos.1 & 2.
Mr. Y.D. Mulani, AGP for Respondent No.3.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : APRIL 12, 2006.

P.C.:

1. In this petition filed under Article 226 of the Constitution the petitioner has assailed the order of termination dated 28/9/1993 and the consequent order dated 30/9/1993 passed by the respondent no.1 relieving him from the post of Marketing Manager. He came to be appointed as the Stores Officer under the respondent - corporation, which is a Government of Maharashtra undertaking, on 10/10/1977 and was confirmed in the same post on 27/12/1978 in the payscale of Rs.600 - 1100. To the post of Controller of Stores and Purchases one Mr.R.D. Avhad came to be promoted and the said promotion was challenged by the petitioner by filing Writ Petition No. 1329 of 1984

which was admitted by this court on 13/8/1984. Another order came to be issued on 28/9/1984 asking the petitioner to hand over the possession of his residential quarter within 24 hours and, therefore, petitioner approached this court in Writ Petition no.4195 of 1984 and injunction was granted. In the 243rd board meeting of the respondent-corporation held at Mumbai on 25/10/1988 it was resolved to abolish the post of Stores Officer by promoting the petitioner to the post of Marketing Manager and with effect from 9/9/1980 in the payscale of Rs.1100 - 1700. The same development was also made known to this court by filing an affidavit in Writ Petition No.1329 of 1984 and the respondent no.1 by the order dated 16/3/1990 appointed the petitioner as Marketing Manager.

2. As per the petitioner, after he came to be appointed in the post of Marketing Manager, he had put in his best efforts to strengthen the marketing activities of all the agricultural produce of the Corporation. The marketing of all agricultural products, which was vested with the Estate Manager earlier, was assigned to the petitioner as per the powers delegated by the board in the meetings held on 21/6/1988 and 13/10/1988 and the marketing division was created with the approval of His Excellency the Governor. The petitioner has also referred to the

voluntary retirement scheme announced by the Corporation vide the Circular dated 23/6/1993 on its sanction by the board of directors in the 259th meeting held on 22/3/1993. He had applied for the same scheme on 9/7/1993 and by his communication dated 7/7/1993 he had brought to the notice of the respondent no.1 that he was to receive by way of arrears in pay an amount of Rs.2 lacs from the Corporation for the period from 9/9/1980 to 7/7/1993. By the impugned order dated 28/9/1993 the petitioner came to be terminated from service on account of abolition of his post and his application dated 9/7/1993 for the benefit of the voluntary retirement scheme also came to be rejected. The impugned orders have been challenged on almost the same grounds as were raised in Writ Petition No.306 of 1995 filed by Mr. R.D. Avhad and which has been decided by us in the last month. For the reasons set out in the said judgment in Writ Petition No.306 of 1995, we reject the challenge to the order of termination dated 28/9/1993. We also hold that it was not possible for the Corporation to absorb the petitioner in some other equivalent post in the payscale of Rs.1100 - 1700 rather than issuing the impugned termination order.

3. As far as the benefit of the voluntary retirement scheme is concerned, no reasons have been

set out in the impugned termination order dated 28/9/1993 rejecting the petitioner's application for the benefit of VRS. There is no dispute that the petitioner was eligible for the said scheme except for his pending writ petition before this court i.e. W.P. No.1329 of 1984. In addition, the petitioner's post was declared surplus and the scheme was primarily granting benefits to such officers whose posts were found surplus or alternatively it was pronounced only to encourage such employees who were found to be surplus to take the benefit and submit their resignation rather than waiting for the termination orders. Writ Petition No.1329 of 1984 came to be allowed by this court on 5/7/1994 by directing the respondent-corporation to pay an amount of Rs.56,615/- by 12th August, 1994. Admittedly, in June 1994 the benefits of VRS have been extended to 42 employees of the Corporation and at least four of them were from the officer's cadre, like the petitioner. The learned counsel for the respondent- corporation has stated that the benefit of VRS was not given to the petitioner mainly on account of pendency of W.P. No.1329 of 1984 and in any case there was nothing adverse against the petitioner and his service was terminated solely because his post was found to be surplus and it was abolished. For the reasons stated in our judgment in Writ Petition No.306 of 1995 we

will have to allow the prayer for extending the benefit of voluntary retirement scheme to the petitioner on the basis of his salary payable in the month of September, 1993.

4. We, therefore, allow the petition partly and direct the respondents 1 and 2 to give the benefit of voluntary retirement scheme circulated on 23/6/1993 to the petitioner on the basis of his salary at the time of termination of his service and the said benefits shall be computed and paid to the petitioner within a period of 12 weeks from today.

5. Rule made absolute in terms of the above order with no order as to costs.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**